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Source: *Economic and Political Weekly*, Vol. 50, No. 49 (DECEMBER 5, 2015), pp. 36-41

Published by: Economic and Political Weekly

Stable URL: <https://www.jstor.org/stable/44002927>

Accessed: 22-10-2021 15:38 UTC

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Civilians Caught in Crossfire

MEHA DIXIT, SAMEER YASIR

India and Pakistan are parties to the Geneva Conventions which are the keystones of International Humanitarian Law. However, notwithstanding the IHL, whenever both belligerents engage in ceasefire violations, indiscriminate firing and shelling across the Line of Control and international border, the civilians residing in these areas are subject to fearsome violence. This study points out that escalation of violence along the Indo-Pak border has enormous physical, economic and psychosocial ramifications on the lives of civilians in these areas.

As tensions between India and Pakistan rage, civilians residing along the disputed Line of Control (LoC) and working international border (IB), continue to experience the fury of mortar shells. The escalation of violence along the border has enormous physical, economic and psychosocial ramifications on the lives of civilians in these areas. In the northernmost Indian state of Jammu and Kashmir (J&K), the worst-affected areas include Balakot, Sabjiyan, Mandi, Bhimber Gali (BG) and Krishna Ghati (KG) along the LoC which lie in Poonch District; and Akhnoor, Suchetgarh, R S Pura, Arnai (all these sectors are in Jammu District), Samba and Kathua Districts along the IB.

For thousands of years, various cultures across the world have developed principles aimed at protecting "unarmed populations from violence at the hands of the armed." Since the Fourth Geneva Convention of 1949, such efforts have come under the rubric of the "Protection of Civilians" (PoC) (Breakey 2012: 40). Since the last decade or more, PoC has been endorsed in a series of reports by the United Nations (UN) Secretary-General to the Security Council, certain United Nations Security Council (UNSC) resolutions and at least eight presidential statements. PoC has also been incorporated in a number of UNSC mandates (Francis and Sampford 2012: 2).

In addition, "as part of these initiatives, the UN bodies have sought to entrench the PoC in conflict in the obligations of parties under international humanitarian, human rights and refugee law." The UN bodies have repetitively urged states which are not a party to the key treaties of international humanitarian, human rights and refugee law to ratify them. Once ratified, all states are urged "to take steps to implement these instruments within their jurisdictions through appropriate legislative, judicial and

administrative measures" (Francis and Sampford 2012: 2-3).

International Humanitarian Law (IHL) is the most important international law that applies during situations of armed conflict. Protection for the civilian population is an essential component of IHL: civilians and all those not participating in the fighting must not be attacked and must be spared and protected.¹ India and Pakistan are both parties to the Geneva Conventions. Therefore, both countries must respect the provisions of the IHL contained in these conventions. While Pakistan has signed, but not ratified the 1977 Additional Protocol of these conventions which strengthens the protection of victims of international armed conflict, India has neither signed nor ratified it. Here it may be noted that considering the universality of the Geneva Conventions, "their general principles, although not all the detailed rules implementing these principles," have now become customary law binding on non-parties (Solf 1986: 124). Therefore, according to one of the key principles of customary IHL, parties to an armed conflict must make a distinction between the civilian population and combatants and between civilian objects and military objectives.

Background

India and Pakistan have fought three wars over the disputed region of Kashmir, where a deadly insurgency has left thousands of civilians dead. Both India and Pakistan have managed the conflict, instead of resolving it. Kashmir issue has always been a major stumbling block whenever the two estranged neighbours have made attempts towards peace. In July this year, after months of political deadlock, both countries issued a joint statement at Ufa, Russia on the sidelines of Shanghai Cooperation Organisation Summit (Hindu 2015). The joint statement included certain actions such as dialogue between the armies of India and Pakistan, a meeting between top security advisers to discuss terrorism, mechanisms to facilitate religious tourism, the release of fishermen in each other's custody, and discussions to expedite the 2008 Mumbai terror-attack

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trial. "Both leaders condemned terrorism in all its forms and agreed to cooperate with each other to eliminate this menace from South Asia" (*Hindu* 2015).

At Ufa, the Prime Minister of India also accepted an invitation by the Prime Minister of Pakistan to attend the South Asian Association for Regional Cooperation (SAARC) summit to be held in 2016 in Islamabad. However, the joint statement did not make any mention of Kashmir. Reportedly, this fuelled resentment within many sections in Pakistan. Soon, on 16 July, tensions escalated between the two countries as both made competing claims of 2003 ceasefire violations. On 26 November 2003, both India and Pakistan had agreed to a ceasefire in the first formal truce between the two armed forces since the inception of militancy in J&K. Guns along the LOC, IB and in Siachen Glacier fell silent the next day. But the calm was broken in September 2013, when an exchange of gunfire occurred between the forces of two countries (Yasir 2014).

While the IB is an internationally recognised boundary that separates the states of India from the provinces of Pakistan, the LOC is the de facto border established after what is called the first war over Kashmir between India and Pakistan in 1947, following a tribal invasion by Pakistan. While India would like to formalise this status quo, Pakistan does not accept this plan since it wants greater control over the region (BBC 2015). In the aftermath of conflict, it was called the Ceasefire Line; however, it was renamed the "Line of Control" following the 1972 Simla Agreement.

As a result of the increasing tensions along the border and political disagreements between India and Pakistan, the national security advisor (NSA) level talks, which were scheduled for 23–24 August 2015 in New Delhi, were cancelled. According to Pakistan, these talks

...cannot be held on the basis of the precondition set by India. The latter had stressed that Pakistan should not have a meeting with All Parties Hurriyat Conference (APHC) leaders from Kashmir and that the agenda of the talks between India's National Security Adviser and his Pakistani counterpart should not extend beyond terrorism. In early August 2014, the Government of India had suspended the dialogue process after Pakistani High

Commissioner, Abdul Basit, turned down the Indian government's demand to refrain from meeting separatist leaders from Kashmir (Jeelani 2015).

Amid the border tensions between India and Pakistan, the civilians on both sides of the LOC and IB are at the receiving end. Towards the end of August it was reported that three civilians were killed and 17 injured in R S Pura, Jammu due to shelling by Pakistani forces. A Border Security Force (BSF) official had stated that India retaliated in equal measure. "Pakistan Rangers resorted to unprovoked firing late last night initially with small arms and later fired mortar shells at BSF posts and civilian areas in the R S Pura sector. The BSF fired back," the official said. Reportedly, eight civilians were killed and more than 46 injured due to shelling by the Indian forces on the Pakistani side (Upadhyay and Ahmad 2015). Further, at the Balakot sector, in Basoni village located along the LOC, just within two days on 15 and 16 August, six civilians were killed. This included the sarpanch of the village, a woman, two teenagers, and a 10-year old boy.

IHL and Protection of Civilians

Geneva Conventions of 1949 and their additional protocols form the cornerstone of IHL, which seek to regulate armed conflict and protect the civilian population. However, "the first systematic codification of the restraints on the methods and means of warfare" was Instructions for the Government of the Armies of the United States in the Field prepared by Francis Lieber in 1863 during the American Civil War (Solf 1986: 121).

As far as the regulation of the means and methods of warfare in treaty law is concerned, it dates back to the 1868 St Petersburg Declaration, the 1899 and 1907 Hague Conventions and the 1925 Geneva Gas Protocol.² Lieber Instructions or the Lieber Code was used as the primary basis for the development of the Hague Conventions of 1899 and 1907, which in turn influenced later developments (Doswald-Beck and Vité 1993).

Some provisions relating to "the protection of populations against the consequences of war and their protection in occupied territories" are included in the

regulations pertaining to the laws and customs of war on land, annexed to the 1899 and 1907 Hague Conventions.³ Although, Article 25 of the Hague Regulations prohibits "the attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended," and is based on the principle of distinction between civilians and combatants, the regulations do not as such state that the parties to the armed conflict make a distinction between civilians and combatants (Henckaerts et al 2005: 3).

During the World War I, the Hague Conventions proved to be inadequate considering the dangers emanating from air warfare and of the problems pertaining to "the treatment of civilians in enemy territory and in occupied territories." The International Conferences of the Red Cross held in the 1920s took the initial steps towards laying down additional or supplementary rules for the protection of civilians during war.⁴ These efforts, after a great deal of struggle, culminated in the Geneva Convention of 1949, which provides protection to civilians, including in occupied territory.⁵

The Geneva Conventions are contained in four international treaties and their additional protocols. The conventions seek to regulate armed conflict and protect the civilian population. While the first Geneva Convention of 1864 protects wounded and sick soldiers on land during war, the second convention of 1906 protects wounded, sick and shipwrecked military personnel at sea during war. Further, the third convention of 1929 pertains to prisoners of war, while the fourth convention of 1949 provides protection to civilians, including in occupied territory.

The 1977 Additional Protocol I of the fourth convention strengthens the protection of victims of international armed conflict, while the Additional Protocol II strengthens the protection of victims of non-international armed conflict. They further place limits on the way conflicts are fought.⁶

The Geneva Conventions, which were adopted prior to 1949, were concerned merely with combatants, not with civilians. The experience of the World War II

demonstrated the catastrophic outcome of the absence of a convention for the protection of civilians during war. The 1949 Convention took account of the disastrous experiences of World War II. The convention comprises 159 articles. It contains a short section regarding “the general protection of populations against certain consequences of war.”⁷ However, laws governing the conduct of hostilities in the Geneva Conventions still dated back to the 1907 Hague Conventions. Military aviation did not even exist when the Hague Conventions were negotiated. These laws were updated by the 1977 Additional Protocols of the 1949 Geneva Conventions.

Application of IHL

The sources of the law of warfare (Law of Hague) and of humanitarian law (Law of Geneva) are both customary and codified in treaties (Gardam 1993: 3). In international law, a treaty is usually defined as an agreement entered into by states and international organisations. There are significant obstacles to applying the treaties to current armed conflicts. Treaties are applicable only to the states that have ratified them. This implies that different treaties of IHL are applicable to “different armed conflicts depending on which treaties the states involved have ratified.” While almost all states have ratified the four Geneva Conventions of 1949, the 1977 Additional Protocol I has not yet achieved universal adherence. Since the protocol applies “only between parties to a conflict that have ratified it,” its effectiveness today is limited because a number of states that “have been involved in international armed conflicts are not a party to it.”⁸

Besides the treaty, customary international law (CIL) which is the other primary form of international law, is characteristically defined as a “general and consistent practice of states followed by them from a sense of legal obligation” (Goldsmith and Posner 1999: 1113). And customary international humanitarian law “is the basic standard of conduct in armed conflict accepted by the world community.” It is universally applicable regardless of the application of treaty law and is based on widespread and almost uniform state practice regarded

as law.⁹ Malcolm MacLaren and Felix Schwendimann note:

Customary law may ‘intervene’ for the sake of the rule of law in armed conflict where States (or non-state actors *qua* definitione) are not party to the relevant treaty, or where the States are party but the customary provision is more extensive in its coverage than the conventional.

They further argue that the custom is binding in both cases. Therefore, custom should always be consulted while researching the relevant law in IHL (MacLaren and Schwendimann 2005: 1220).

Solf notes that considering the universality of the Geneva Conventions, it may be said that “their general principles, although not all the detailed rules implementing these principles,” have now become customary law binding on non-parties (1986: 124). Moreover, the status of the Geneva Conventions as customary law has been established by the International Court of Justice and is rarely contested (Meron 2000: 80).

Further, the Martens Clause “safeguards customary law and supports the argument that what is not prohibited by treaty may not necessarily be lawful.” It is applicable to all parts of IHL, not merely to belligerent occupation (Meron 2000: 87–88). As it first appeared in the Preamble to the 1899 Hague Convention, the Martens Clause states:

Until a more complete code of the laws of war is issued, the high contracting parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience (Shearer 2001).

The 1907 Hague version was somewhat different; “populations” were replaced by “inhabitants,” the older term “law of nations” was substituted for “international law” and “requirements” were replaced by “dictates.” Even though both the 1899 and the 1907 versions mention “laws of humanity,” it has become a common practice to refer to them as “principles of humanity” (Meron 2000: 79).

The International Court of Justice, in its advisory opinion, acknowledged the relevance of “the Martens Clause to considering the legality of means and

methods of warfare and of particular weapons,” however, it did not resolve the principle controversies regarding its interpretation (Meron 2000: 79). Nevertheless, it is generally agreed that the clause signifies, at the minimum, that “the adoption of a treaty regulating particular aspects” of the law of warfare “does not deprive the affected persons of the protection of those norms of customary humanitarian law” that were not incorporated in the codification (Meron 2000: 87).

Impact on Civilians

The indiscriminate firing and shelling by the Indian and Pakistani forces across the LOC and IB is in violation of the IHL which seeks to regulate armed conflict and protect the civilian population. The physical, economic, and psychosocial impact of the border violence on the civilians along the border villages in Jammu and Kashmir is discussed here.

Physical and Economic Impact: IHL forbids all methods and means of warfare which:

Fail to discriminate between those taking part in the fighting and those, such as civilians, who are not, the purpose being to protect the civilian population, individual civilians and civilian property; cause superfluous injury or unnecessary suffering; cause severe or long-term damage to the environment.¹⁰

The indiscriminate firing by both the Indian and Pakistani security forces poses a huge threat to the lives of the civilians and their property, residing on both sides of the border. It frequently causes “superfluous injury or unnecessary suffering” and “severe or long-term damage to the environment.” As far as the healthcare provisions for the people during peacetime and situations of armed conflict are concerned:

In all circumstances, in times of peace and during conflict, States have an obligation to maintain a functioning health-care system. Similar provisions exist in IHL that require States to provide food and medical supplies to the population..... Though both IHL and IHRL allow States to predicate their obligations on the resources available to them, a lack of resources does not justify inaction. Even in cases where resources are extremely limited, States should adopt low-cost programmes that target the most disadvantaged and marginalized members of the population.¹¹

According to the locals and journalists who were interviewed along the LOC and IB, despite continuous threat to the lives of civilians residing in the border areas, there are hardly any adequate medical facilities. Tarachand from Sidherwan village in Akhnoor sector along the IB said:

There is one dispensary between four villages and that too closes at four in the evening. And the closest hospital is in Akhnoor which is around 15 kms away from our village. During the shelling, the dispensary remains open till late. However, it lacks efficient doctors.¹²

Those who get injured during the shelling often have to travel to the town or city for treatment. There are hardly any ambulances and even during emergencies, there is scarcity of ambulances and doctors. Further, during border tensions, the civilians are frequently confronted with the issue of food and water scarcity. Vijay Bharadwaj, a local journalist from R S Pura, who has been relentlessly highlighting the issues which confront the villagers along the IB, noted:

During firing and shelling, people who flee their villages to take shelter in the safer areas often have to live without food for days. Even those who continue to stay in their villages are often deprived of food since they are unable to go out to collect firewood for cooking.¹³

Besides, the locals in the border villages noted that the state rarely offers adequate compensation to those families who have lost a member; and also to those who have been injured during the cross-border shelling. Roshan Lal from Flaura village in Suchetgarh stated:

In 2014, my leg was severely injured during the shelling. After I was injured, my nephew took me to R S Pura and I was admitted at the Bakshinagar hospital for 25 days where my leg was operated upon. The state provided me Rs 53,000 in compensation. After the operation, I was not given medicines in time. I was not recovering. Therefore, I went to a private hospital in Amritsar where I stayed for around 35 days and ended up spending over Rs 3 lakh on my treatment. I had to mortgage my land to pay the bills. A certain amount of money was provided by my relatives.¹⁴

In addition, some locals from Sidherwan noted that if a person is injured during the shelling, the state usually provides her/him merely Rs 5,00. Further, in the border villages, there is an invariable threat of the civilians' cattle being killed or injured and/or farms or homes being

destroyed during the cross-border firing. However, during the field research in the border villages, the locals noted that there is a lack of adequate facilities for the treatment of the injured cattle and sufficient compensation to those whose farms and/or homes have been destroyed or cattle have been killed or injured is hardly ever provided. Sunil, from Sidherwan village said:

If someone's farm in the village is destroyed during the shelling, she/he is just provided with around Rs 2,000 per acre to cultivate the land again.¹⁵

However, a critical issue is that due to recurrent firing and shelling, the land may become infertile or unproductive. Yet, no insurance is offered to the farmers for the farms in these border villages. Besides, most people in the villages along the IB and LOC are dependent on agriculture and cattlerearing and during border tensions they cannot get to their farms or have to migrate away from them which are their only source of livelihood.

Psychosocial Impact: The constant physical threat to their lives and limbs or the loss of farms and cattle is likely to resound in the psyche of the civilians residing in the border areas. The upshot of the physical and economic threat is the undesirable psychosocial consequences for the border people. The approach termed as "psychosocial" in relation to the armed conflict is summarised in the 1997 Cape Town Principles and is explained in the following manner:

The term 'psychosocial' underscores the close relationship between the psychological and social effects of armed conflict, the one type of effect continually influencing the other. 'Psychological effects' are defined as those experiences that affect emotions, behaviour, thoughts, memory and learning ability and the perception and understanding of a given situation. 'Social effects' are defined as the effects that the various experiences of war (including death, separation, estrangement and other losses) have on people, in that these effects change them and alter their relationships with others. 'Social effects' may also include economic factors. Many individuals and families become destitute because of the material and economic devastation of war, losing their social status and place in their familiar social network.¹⁶

Yet, the psychological health of the civilians in border areas is sidelined and

there are no facilities in these villages or even in nearby towns which would take account of the psychosocial needs of these people. It may be noted that where there are barely sufficient medical facilities for the physical health or treatment of the border people, even the idea of human and other resources for their psychosocial health would seem far-fetched.

Further, the threat of being displaced or actual displacement is a major cause of concern which deeply affects the civilians in the border areas at the psychosocial level. The recent escalation of border tensions between the two estranged neighbours has rendered a large number of civilians in the border areas homeless or internally displaced. While refugees are people who have crossed an international boundary and "are at risk or have been victims of persecution in their country of origin," the internally displaced persons (IDPs), have not crossed an international boundary, but have, for whatever reason, fled their homes.¹⁷

There is no convention for IDPs comparable to the 1951 Refugee Convention. Nevertheless, the IHL offers them protection in situations of armed conflict. "Under IHL, people are protected from and during displacement as civilians, provided they do not take a direct part in hostilities." Several rules of IHL offer protection to the civilian population and their violation often is a root cause of displacement. For instance, the IHL prohibits attacks by parties to an armed conflict on civilians as well as civilian objects. It further forbids indiscriminate methods of warfare that may have adverse consequences for civilians.¹⁸

The indiscriminate firing and shelling across the border by both India and Pakistan have led to the internal displacement of the civilians on both sides. Further, during the field research conducted by the authors along the LOC and IB, it became apparent that the supply of relief materials for the IDPs by the state is rarely adequate.

During the cross-border firing, the Indian government usually provides emergency shelter to the civilians in schools and government buildings in the safer areas. However, these shelters are usually insufficient. Along the LOC and IB, the civilians are demanding underground

bunkers which can be used by them for shelter during the firing and shelling in their villages. In February 2015, a proposal was sent by the J&K government to the centre for setting up 20,125 community bunkers at an estimated cost of Rs 1,006.25 crore in 448 villages close to the LOC in Kashmir and the IB near Jammu. Mufti Mohammad Sayeed, the Chief Minister of J&K told the state assembly that the proposal would cover a population of 4,02,455 close to the border areas in districts of Jammu, Kathua, Samba, Rajouri and Poonch.¹⁹ However, a number of villages in these areas still lack underground bunkers.

Irfan Khan, son of the slain sarpanch, Karamatullah Khan, from Balakot along the LOC said:

There were bunkers in the border areas which villagers had constructed in the early 1990s when the firing between India and Pakistan was a daily occurrence. However, during the time when peace prevailed in the region, these bunkers were not used much for nearly 10 years. Most of these bunkers were, in time, filled with mud and other things. But the bunkers here are as important as water, air and food. The government should provide each village with fresh bunkers. If that happens many lives would be saved.²⁰

Further, Sunil from Sidherwan which is located along the IB highlighted the issues concerning underground bunkers in his village,

Between two–three villages including Sidherwan, there is only one bunker around one km from Sidherwan, however, that too is usually filled with water especially during the monsoons.²¹

In August this year, at the height of border tensions in Poonch, when one of the authors interviewed Pawan Kotwal, Divisional Commissioner, Jammu regarding the state government's proposal on bunkers for the civilians in border areas, he explained:

The Central government recently approved a pilot project of Rs 60 lakh to set up underground bunkers in Jammu. We are already working on this project, apart from the state government's proposal for setting up of 20,125 bunkers in the villages close to the LOC in Kashmir and International Border near Jammu. Presently there are no bunkers in the Poonch region. I am sure if these bunkers are constructed in different areas in the times of crisis they will save lives.²²

Another cause of concern is that a number of people along the border live in

kaccha huts instead of concrete houses which are more prone to being damaged during the cross-border shelling. There is also an invariable fear among the people in these areas of the splinters of mortar shells entering their huts which may not just damage the huts, but also injure or kill those residing in them. Nazia, on her way to Drati from the burial of her relative who was killed at Basoni in Balakot, pointed out:

Most people in my village (Drati) live in *kaccha* huts and are always worried about shells landing inside them.²³

Further, the tensions along the border erode the social fabric of life. It may be noted that due to the firing and shelling, as civilians in border areas get displaced or become homeless, it not just has huge economic repercussions, but psychosocial consequences as well. Since the people in these areas may have to live away from their homes, their community life is disrupted. Even those who continue to stay in their villages are frequently unable to take part in communal gatherings or religious celebrations or activities. The disruption of life severs family and community ties.

In addition, most locals who were interviewed during the field research said that the state has not yet provided them land for emergency shelter which it had promised. The villagers from Sidherwan noted that the government had promised them land in safer areas for emergency shelter. However, no one has received it so far. Unlike the people of Jorafarm in Suchetgarh, who do not have farms and are willing to settle in safer areas, most people along the IB and LOC who were interviewed depend on agriculture and are merely demanding emergency shelter in safer areas. This is because the latter cannot leave their farms and settle elsewhere permanently.

Impact on Children and Young People:

IHL offers general protection for children as persons not taking part in hostilities, and special protection as persons who are particularly vulnerable.

During international armed conflicts, children come into the category of those protected by the Fourth Geneva relative to the protection of civilian persons in time of war. By virtue of this, they benefit in particular from all the provisions relative to the treatment of protected persons, which state the basic principle of

humane treatment, including respect of life and physical and moral integrity, and forbidding, inter alia, coercion, corporal punishments, torture, collective penalties and reprisals (Plattner 1984).

Although the Fourth Geneva Convention comprises a number of provisions in favour of children, however, the principle on which the rules pertaining to children are based is not stated explicitly in this particular Convention (Plattner 1984). Protocol I attempts to fill this gap through Article 77 which states that

Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.²⁴

Even though, India and Pakistan have not ratified the Additional Protocol I, however, they must respect the IHL which offers general protection for children as persons not taking part in hostilities, and special protection as persons who are particularly vulnerable.

During the border tensions between the two neighbours, children have always been adversely affected. They are often killed or injured. As mentioned previously, within two days (15 and 16 August) in Balakot, Poonch, six civilians were killed. Among them were two teenagers and a 10-year old boy. In addition, the border tensions lead to the disruption of education. As a result of the firing and shelling, children may even have to spend months without schooling. Bilash Sharma from Sidherwan who is currently pursuing graduation said:

In September 2014, due to continuous shelling, we had to leave the village. Schools were shut for around 20 days. We were provided government accommodation in a school in the safer area.²⁵

Besides education, children during the cross-border shelling are unable to engage in recreational activities. Further, due to invariable fear of the border violence, children, in particular, may even be more vulnerable to psychological problems. Jyoti who is married in Gakhriyal village in Akhnoor noted:

Whenever there is firing in Gakhriyal, it is difficult to explain the children. They get extremely scared. A few days back (in early

August), firing and shelling took place in the village. I had to leave for my parent's place in Kanachak with my children. But the situation in Kanachak is also very unpredictable. Anytime the firing can start.²⁶

Conclusions

Both India and Pakistan are parties to the Geneva Conventions which are the keystones of IHL. However, notwithstanding the IHL, whenever both belligerents engage in ceasefire violations and indiscriminate firing and shelling across the LOC and IB, the civilians residing in these areas are subject to appalling violence. The interregnum between episodes or occurrences of violence can be defined as anything but "peacetime" for the civilians as the threat or wounds of physical violence continue to reverberate each time the shells stop blazing. The intermittent physical violence or its threat may lead to psychosocial issues among the civilians who reside in the border villages.

While India has not signed or ratified the 1977 Additional Protocol I to the Geneva Conventions which strengthens the protection of victims of international armed conflict, Pakistan has only signed but not ratified it. Even if a state has not ratified Protocol I, however:

According to an uncontroversial principle of customary international humanitarian law (IHL), parties to an armed conflict must distinguish between the civilian population and combatants and between civilian objects and military objectives (Sassòli 2003).

Further, the Martens Clause which is applicable to all parts of IHL safeguards customary law. And in case of doubt, argues for interpreting IHL "consistently with the principles of humanity and the dictates of public conscience" (Meron 2000: 87–88).

NOTES

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- 3 ICRC (2015b), "Convention (IV) Relative to the Protection of Civilian Persons in Time of War: Geneva, 12 August 1949," accessed on 27 August 2015, available at: <https://www.icrc.org/ihl/INTRO/380>.
- 4 See note 3.
- 5 See note 3.
- 6 ICRC (2010a), "The Geneva Conventions of 1949

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- 12 Personal interview with Tarachand from Sidherwan village, Akhnoor on 7 August 2015.
- 13 Personal interview with Vijay Bharadwaj from RS Pura, on 11 August 2015.
- 14 Personal interview with Roshan Lal from Flaura, Suchetgarh (RS Pura) on 11 August 2015.
- 15 Personal interview with Sunil from Sidherwan, Akhnoor on 7 August 2015.
- 16 "Cape Town Principles and Best Practices," Cape Town Principles 1997, accessed on 25 January 2015, available at: [http://www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf).
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- 19 Greater Jammu (2015), "Proposal to Set Up over 20,000 Bunkers Along Border Sent to Centre," accessed on 25 August 2015, available at: <http://www.greaterjammu.com/2015/20150325/state.html>.
- 20 Personal interview with Irfan Khan from Jammu 18 August 2015.
- 21 See note 15.
- 22 Personal interview with Pawan Kotwal, Divisional Commissioner, Jammu, 17 August 2015.
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